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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,137	09/06/2005	Lone Andersen	GRP-0102	2575
23413	7590	02/25/2008		
CANTOR COLBURN, LLP 20 Church Street 22nd Floor Hartford, CT 06103			EXAMINER CORBIN, ARTHUR L	
			ART UNIT	PAPER NUMBER
			1794	
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			02/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,137	Applicant(s) ANDERSEN ET AL.	
	Examiner Arthur L. Corbin	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03-23&08-29-05; 07-26&11-10-06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☒ Claim(s) 1-9,13,15,21,25,31,34,51 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>032305,082905,072606,111006</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

2. Claims 1-9, 13, 15, 21, 25, 31, 34, 51 and 52 are objected to because of the following informalities: In each of claims 1-5, "by weight" should be added before "of the chewing gum". In each of claims 2-4, "containing" should be changed to "contains". In line 4 of claims 6 and 7, "are" should be changed to "is". In claim 8, "is" should be changed to "are". In claim 9, line 6, and claim 34, line 6, "atoms" should be singular. In claim 13, "softeners or chewing gum" (line 2), should be changed to "softener or sweetener". In claim 15, line 2, "comprises" should be singular. In claim 21, "comprising" should be "comprise". In claim 25, line 2, "comprises" should be singular, and line 4, the third comma should be changed to "or". In claim 31, penultimate line, "magnesiumoxide" should be two words and "/or" should be cancelled, and last line "or derivates" should be cancelled. In claims 51 and 52, "comprises" should be singular. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-10, 15, 18-20, 22, 24, 34-36 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis: in claim 1 for "the functional number of initiator" (claim 8); in claim 7 for "the lactone monomers" (claim 9, line 2) and "the carbonate monomer" (claim 10, line 2); in claim 14 for "said flavoring agent " (claims 18 and 20); in claim 18 for "said

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water soluble flavoring agent" (claim 19); in claim 21 for "said sweetener" (claims 22 and 24); in claim 33 for "lactone monomers" (claim 34, line 2) and "the carbonate monomer" (claim 35, line 2); and in claim 6 for "polyester...monomers" (claim 36, lines 2-3). Claim 9 is indefinite since it is not clear what is intended by "and mixtures thereof" (last line). Claim 15 is indefinite in reciting "other...profile" (last line). Claim 46 is indefinite in reciting "and an agent...polymer" (last two lines). Corrections are required without new matter.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-39 and 49-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grijpma et al (5,672,367, cols. 1-3). Grijpma et al discloses a chewing gum, free of non-biodegradable polymers (claim 32), and including one or more biodegradable polymers as claimed by applicant, in the amounts claimed by applicant and obtained using the procedure claimed by applicant (claims 6-10, 33-36, 50-55). The chewing gum also includes conventional chewing gum ingredients, including a medicinal active agent (claim 31), as claimed by applicant in the amounts claimed by applicant (claims 1, 12, 14, 15, 18-31, 37-39, 49, 55). Finding the optimum amount of water and flavoring agents to be included in the chewing gum (claims 1-6, 16, 17) would require nothing more than routine experimentation by one reasonably skilled

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in this art. The use of erythritol (claim 13) is a well known and viable alternative for other sugar alcohol sweeteners disclosed in the primary reference.

7. Claims 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grijpma et al as applied to the claims above above, and further in view of Meyers (5,433,960, cols. 3 & 9-13 and claims 1, 16, 27). It would have been obvious to coat the chewing gum in Grijpma et al with a coating as claimed by applicant in order to provide storage stability to the chewing gum since it is well known to coat chewing gum products with each of applicant's claimed coating materials in order to achieve this objective, as evidenced by Meyers.

8. Claims 1-30, 32-42, 46, 47 and 49-55 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al (WO 01/47368, pages 4-7, 9-15, 17, 19, 42) . Goldberg et al discloses a chewing gum, free of non-biodegradable polymers (claim 32), and including one or more biodegradable polymers as claimed by applicant, in the amounts claimed by applicant and obtained using the procedure claimed by applicant (claims 6-10, 33-36, 50-55). The chewing gum also includes conventional chewing gum ingredients as claimed by applicant in the amounts claimed by applicant (claims 1, 12, 14, 15, 18-30, 37-39, 49, 55). Further, the chewing gum in Goldberg et al can be coated with a coating syrup (page 9 of Goldberg et al and applicant's claims 40-42, 46, 47). Finding the optimum amount of water and flavoring agents to be included in the chewing gum (claims 1-6, 16, 17) would require nothing more than routine experimentation by one reasonably skilled in this art. The use of erythritol (claim 13) is

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a well known and viable alternative for other sugar alcohol sweeteners disclosed in the primary reference.

9. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al as applied to the claims above, and further in view of Grijpma et al (col. 3, line 4) or Li et al (6,153,231, col. 7, lines 60-61). It would have been obvious to include a medicinal or pharmaceutical ingredient as an active ingredient in the chewing gum of Goldberg et al since such an ingredient is a conventional chewing gum component, as evidenced by either secondary reference.

10. Claims 43-45 and 48 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al as applied to the claims above, and further in view of Meyers. Meyers is applied as in paragraph no. 7 above.

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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12. Claims 1-55 are further provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims: 1-62 of copending Application No. 10/472,122; claims 1-54 of copending Application No. 10/472,154; claims 1-67 of copending Application No. 10/528,926; claims 1-64 of copending Application No. 10/528,930; claims 1-57 of copending Application No. 10/528,927; claims 1-1-20, 22-26 and 28-42 of copending Application No. 10/529,133 and claims 1, 2, 10, 11, 13-18, 24-26 and 28-54 of copending Application No. 11/088,109. Although the conflicting claims are not identical, they are not patentably distinct from each other because the chewing gum claimed in the claims of each of said applications is merely an obvious variation of the chewing gum claimed by applicant in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for


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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



Arthur L Corbin
Primary Examiner
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